



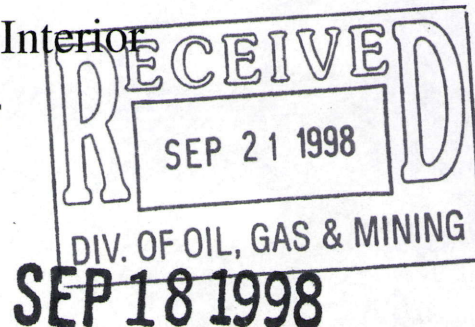
IN REPLY REFER TO:

3809
U-77017
(UT-023)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Salt Lake District Office
2370 South 2300 West
Salt Lake City, Utah 84119



CERTIFIED MAIL Z 155 665 765
RETURN RECEIPT REQUESTED

Mr. Lon Thomas
Thomas American Stone and Building, Inc.
4040 South 300 West
Salt Lake City, UT 84107

Dear Mr. Thomas:

On September 17, 1998, we received your Notice to mine building stone in the Horse Creek area in T. 11 S., R. 9 E., Sections 34 and 35 (UMC 365028-36503). We cannot accept your Notice because you have established a Record of Noncompliance as of November 18, 1997, for failure to file a Notice or Plan of Operations for milling activities in the Aragonite area, and for your failure to reclaim the Aragonite area as you agreed to do under your reclamation plan, dated October 21, 1991.

As described at 43 CFR 3809.3-2(e), all operators who have established a Record of Noncompliance are required to file a Plan of Operations and a 100 percent reclamation bond with the Bureau of Land Management (BLM) for all future mining or exploratory operations in excess of casual use. We have enclosed a Plan of Operations format for your use.

It is our opinion that you are proposing to mine common variety mineral materials (salable minerals) under the auspices of the mining law. On July 23, 1955, Public Law 167 (69 Stat. 368; 30 U.S.C. 611) was passed to prohibit further location of common variety minerals. The Act stated:

No deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders and no deposit of petrified wood shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws.

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If you still wish to mine building stone under the authority of the Mining Law of 1872, this office will have to determine the locatability of the mineral prior to further processing of the Plan of Operations. If it is determined that the mineral deposit is a common variety, then a validity determination will be conducted, and a contest complaint will be issued.

For minerals to be uncommon, and therefore locatable, they must meet the following criteria, as cited in McClarty v. Secretary of Interior, 408 F. 2d. 907, 980 (9th Cir. 1969):

1. There must be a comparison of the mineral deposit in question with other deposits of such minerals generally;
2. The mineral deposit in question must have a unique property;
3. The unique property must give the deposit a distinct and special value;
4. If the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and
5. The distinct and special value must be reflected by the higher price which the material commands in the market place, or by reduced cost or overhead so that the profit to the claimant would be substantially more.

One option that is available to you is for you to purchase the subject building stone under BLM's mineral material disposal regulations at 43 CFR 3600. We have enclosed a copy of these regulations for your use. Please be advised that the removal of mineral materials without a mineral material sales contract will be considered a willful trespass.

Please submit your Plan of Operations within 30 days of receipt of this letter, or we will consider your Plan to be withdrawn. If you have any questions, or require additional information, please feel free to contact Michael Ford of my staff at (801) 977-4360.

Sincerely,

/s/ Margaret Wyatt

Margaret Wyatt
Area Manager

Enclosures

cc: D. Wayne Hedberg, UDOGM